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FILED
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CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

No. 930. 44

JOHN V. DOBSON,

Petitioner,

vs.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE,

Respondent.

No. 931. 45

E. W. DOBSON,

Petitioner,

vs.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE,

Respondent.

No. 932. 46

ESTATE OF JAMES N. COLLINS, DECEASED, FIRST NATIONAL BANK AND TRUST COMPANY OF MINNEAPOLIS, EXECUTOR,

Petitioner,

vs.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE,

Respondent.

No. 933. 47

H. J. HARWICK,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

PETITIONERS' REPLY MEMORANDUM

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PETITIONERS' REPLY MEMORANDUM

On pages 21 to 24 of petitioners' brief in support of their petition for writs of certiorari, it was asserted that the decision of the Circuit Court of Appeals for the Eighth Circuit in these cases is in conflict with the decision of the Circuit Court of Appeals for the Third Circuit in the case of *Pittsburgh Brewing Co. vs. Commissioner* (1939), 107 F. (2d) 155. Said brief also pointed out that the case of *Virginian Hotel Corporation of Lynchburg vs. Commissioner,* decided by the Circuit Court of Appeals for the Fourth Circuit, was also in conflict with the *Pittsburgh Brewing Co.* case, and that this court granted certiorari in the *Virginian Hotel Corporation* case, No. 766, on April 5, 1943. The respondent, in its memorandum, agrees that the *Virginian Hotel Corporation* case presents a problem analogous to these cases. Since the petitioners' brief was filed, a decision by the Circuit Court of Appeals for the Eighth Circuit in the case of *Douglas, et al., vs. Commissioner* (April 7, 1943), ... F. (2d) ..., gives further support to the conclusion that the problems involved in these cases and in the *Virginian Hotel Corporation* case are substantially the same. (Because the Federal Reporter citation is not yet available, the court is advised that the opinion in the *Douglas* case is found at Par. 9386 of Vol. 4, Commerce Clearing House Standard Federal Tax Service for 1943 and is also found at Par. 62,588 of Vol. 4, Prentice Hall 1943 Federal Tax Service.)

The *Douglas* case involved the question as to whether or not the cancelation of an iron mine lease required the lessor to report as taxable income for the year of cancelation an amount equal to the deduction for depletion claimed in a year prior to the year of cancelation with respect to royalties paid for ore which was, in fact, not mined. After holding that the lessor was required to report such amounts as taxable income, the court considered the second phase of the case which involved the question as to the effect of a showing that in a particular year in which the deduction for depletion was claimed the lessor had a net loss for Federal income tax purposes before claiming the deduction for depletion. The court concluded that, under these circumstances, the fact that the depletion had been of no tax benefit did not prevent the inclusion of the amount specified in income and cited, in support of this conclusion, its opinion in the cases here involved. The court significantly then stated:

> "(The principle) has also been rejected by the Fourth Circuit Court of Appeals in *Helvering vs. State-Planters Bank & Trust Co.*, 130 F. (2d) 44, and in *Helvering vs. Virginian Hotel Corporation*, 132 F. (2d) 909."

Dated May 12, 1943.

Respectfully submitted,

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